

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DENNIS TALLMAN,)
Plaintiff,)
vs.)
CPS SECURITY (USA), INC., CPS)
CONSTRUCTION SECURITY PLUS,)
INC.,)
Defendants.)

2:09-CV-00944-PMP-PAL
ORDER

On March 16, 2011, the Court conducted a hearing regarding Defendants' fully briefed Motion to Deny Class Certification (Doc. #31). Encompassed within said hearing were the arguments of counsel in support of and in opposition to Plaintiff's Motion to Certify Class under Rule 23 and For Final Collective Action Certification Under 29 U.S.C. §216(b), and to File a Supplementary Response to Defendants' Motion to Deny Class Certification (Doc. #56).

This action was commenced April 30, 2009 by the filing of Plaintiff's Complaint in the Eighth Judicial District Court, in and for the County of Clark, State of Nevada, alleging three claims for relief. Plaintiff's first cause of action states a claim for relief on behalf of Plaintiff Dennis Tallman and all other persons who choose to file a written consent to join this action as a plaintiff pursuant to 29 U.S.C. §216(b) of the Fair Labor Standards Act ("FLSA"). Plaintiff's second cause of action states a claim for class action relief on behalf of Plaintiff Dennis Tallman and

1 all persons similarly situated pursuant to Nevada Labor Law. Plaintiff's third cause
2 of action states a class action claim for relief under N.R.S. §608.040 on behalf of
3 Plaintiff Dennis Tallman and all other persons similarly situated.

4 Defendants' removed the action to this Court on May 26, 2009. Discovery
5 was stayed for a period of time to enable the Parties to engage in an unsuccessful
6 effort at mediation of Plaintiff's claims. Now before the Court are the cross-motions
7 of the Parties regarding the viability of class certification (Doc. #31 and #56).

8 The Court finds that Plaintiff's second and third state law class action
9 claims substantially predominate over Plaintiff's first claim for relief under the Fair
10 Labor Standards Act, 29 U.S.C. §216(b). Under the circumstances, and as
11 recognized by both Parties to this action, the Court may decline to exercise
12 supplemental jurisdiction over Plaintiff's state law class action claims. 28
13 U.S.C. §1337(c). The Court finds it is appropriate in this case to decline exercise of
14 supplemental jurisdiction over Plaintiff's state law claims, and to sever them from
15 Plaintiff's FLSA claim, and to remand Plaintiff's state law claims to the Eighth
16 Judicial Court in and for the County of Clark where the action originated.

17 **IT IS THEREFORE ORDERED** that Plaintiff's Second Cause of Action
18 stating a claim for class action relief on behalf of Plaintiff Dennis Tallman and all
19 persons similarly situated pursuant to Nevada's Labor Law, and Plaintiff's Third
20 Cause of Action stating a claim for class action relief under N.R.S. §608.040 on
21 behalf of Plaintiff Dennis Tallman and all persons similarly situated, are hereby
22 severed from this action, and remanded to the Eighth Judicial District Court in and
23 for the County of Clark, State of Nevada in Case No. A09589249.

24 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Class
25 Certification (Doc. #56) is **DENIED** without prejudice to renew the same before the
26 State Court wherein Plaintiff's class action claims shall proceed.

1 **IT IS FURTHER ORDERED** that Defendants' Motion to Deny Class
2 Certification (Doc. #31) is **DENIED** without prejudice to renew said motion before
3 the State Court before which Plaintiff's Second and Third Claims for Relief shall
4 proceed.

5 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Acceptance of
6 Consents Under the Fair Labor Standards Act (Doc. #49) and Plaintiff's Motions for
7 Leave to File a Supplement Thereto (Doc. #51, #54, #60 and #71) are **DENIED**
8 without prejudice to re-file said consents to the extent they reflect the consent of
9 each putative plaintiff in question to "opt in" to the collective action alleged by
10 Plaintiff Tallman in Plaintiff's First Cause of Action under the Fair Labor Standards
11 Act, 29 U.S.C. §216(b).

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13 DATED: March 22, 2011.
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17 PHILIP M. PRO
United States District Judge
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